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34
35 **UNITED STATES DISTRICT COURT**
36
37 **NORTHERN DISTRICT OF CALIFORNIA**
38
39 **SAN FRANCISCO DIVISION**

40 META PLATFORMS, INC., a Delaware
41 corporation,

42 Plaintiff/Counterclaim
43 Defendant,

44 v.

45 BRANDTOTAL, LTD., an Israel
46 corporation, and UNIMANIA, INC., a
47 Delaware corporation,

48 Defendants/Counterclaim
49 Plaintiffs.

50 Case No. 3:20-cv-07182-JCS

51
52 **META PLATFORMS' NOTICE OF**
53 **MOTION AND MOTION FOR PARTIAL**
54 **SUMMARY JUDGMENT, AND**
55 **MEMORANDUM OF POINTS AND**
56 **AUTHORITIES IN SUPPORT THEREOF**

57 Hon. Joseph C. Spero
58 Courtroom F – 15th Floor
59 Date: April 29, 2022
60 Time: 9:30 a.m.

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CASES

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| 15 | <i>S & J Rentals, Inc. v. Hilti, Inc.</i> , 294 F. Supp. 3d 978 (Mar. 23, 2018) | 13 |
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| 17 | <i>Sanchez v. County of San Bernardino</i> , 98 Cal. Rptr. 3d 96 (2009) | 14 |
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| <i>Webber v. Inland Empire Investments</i> , 74 Cal. App. 4th 884 (1999) | 25 |
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| <i>Winchester Mystery House, LLC v. Global Asylum, Inc.</i> , 210 Cal. App. 4th 579 (2012) | 27 |
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STATUTES, RULES, AND REGULATIONS

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OTHER AUTHORITIES

| | |
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| Amazon, <i>Conditions Of Use</i> , https://www.amazon.com/gp/help/customer/display.html?nodeId=508088 (last accessed Mar. 11, 2022)..... | 15 |
| LinkedIn, <i>LinkedIn Service Terms</i> , https://www.linkedin.com/legal/l/service-terms (last accessed Mar. 11, 2022)..... | 15 |
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| YouTube, <i>Terms Of Service</i> , https://www.youtube.com/t/terms (last accessed Mar. 11, 2022)..... | 14 |

NOTICE OF MOTION AND MOTION FOR PARTIAL SUMMARY JUDGMENT

PLEASE TAKE NOTICE THAT, on April 29, 2022 at 9:30 a.m. or as soon thereafter as the matter may be heard, in Courtroom F of the U.S. District Court for the Northern District of California, San Francisco Division, at 450 Golden Gate Avenue, San Francisco, California, Plaintiff/Counterclaim Defendant Meta Platforms, Inc. (“Meta”) will and hereby does move for partial summary judgment pursuant to Federal Rule of Civil Procedure 56. This Motion is based upon this Notice of Motion, the Memorandum of Points and Authorities filed herewith, and the Declarations of Allison Schultz, Sanchit Karve, Andrew Herter, Dr. Stephen Prowse, and Benjamin Ackerman filed herewith along with the accompanying exhibits.

Meta requests that this Court grant partial summary judgment in Meta’s favor on its claims for Breach of Contract, violation of the Computer Fraud and Abuse Act (“CFAA”), violation of the California Comprehensive Computer Data Access and Fraud Act (“CDAFA”), violation of the unlawful prong of California’s unfair competition law (“UCL”) (Counts I, III, IV, and VI), and Defendants/Counterclaim Plaintiffs BrandTotal Ltd. and Unimania, Inc.’s (collectively “BrandTotal”) counterclaims for Intentional Interference with Contract, Intentional Interference with Prospective Economic Advantage, and violation of the UCL (Counts I, II and III).

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION AND STATEMENT OF ISSUES TO BE DECIDED

Since 2017, BrandTotal has intentionally engaged in an extensive data scraping operation collecting user- and advertising-related data from Facebook and Instagram without Meta's authorization. BrandTotal scraped data from the Facebook and Instagram platforms including data about the performance of posts (such as shares, likes, comments, views) and data about Meta users (such as their interests, gender, month and year of birth, interactions with posts, and location) through mobile applications and browser extensions created or owned by BrandTotal that users installed. See Ex. 1 ¶¶ 20-27.¹ BrandTotal also sent [REDACTED]

[REDACTED] . BrandTotal sold the scraped data, for profit, in the form of marketing “insights” to its customers. BrandTotal designed its business

¹ All exhibits are attached to the Declaration of Allison Schultz, which is filed herewith.

1 knowing that its scraping practices violated Facebook's Terms of Service ("Facebook Terms") and
 2 Instagram's Terms of Use ("Instagram Terms") and went to great lengths to conceal its conduct.
 3 BrandTotal continues to scrape and sell data from Meta to this day even after Meta took technical
 4 and legal measures to revoke access to its platforms. Meta is entitled to summary judgment as to
 5 liability on its breach of contract claim, its claims under the CFAA, CDAFA, and the unlawful
 6 prong of the UCL, and on BrandTotal's tortious interference and UCL counterclaims.

7 **First**, BrandTotal is liable for breach of contract because it is undisputed that BrandTotal
 8 agreed to and violated Meta's terms from 2017 and through the present. BrandTotal concedes that
 9 it agreed to the Facebook and Instagram Terms, that those terms prohibit the automated collection
 10 of data from Meta products without Meta's permission, and that it collected and continues to
 11 collect data from Meta products using automated means without Meta's permission. BrandTotal
 12 seeks to excuse its breach based on two affirmative defenses: that (1) Meta's decision to disable
 13 some of its accounts relieved BrandTotal of its contractual obligations and (2) Meta's applicable
 14 terms are void as a matter of public policy. The first defense is irrelevant because it is uncontested
 15 that BrandTotal breached the Meta terms before any of its accounts were disabled, and because
 16 BrandTotal has active accounts to this day. BrandTotal also agreed to a survival clause in the
 17 Facebook Terms that makes the prohibition against automated collection enforceable even after
 18 an account is disabled. The second defense fails as a matter of law because BrandTotal cannot
 19 demonstrate that Meta's prohibition against automated collection without permission is contrary
 20 to public policy. Prohibitions against automated collection like Meta's are commonplace (and even
 21 used by BrandTotal) and are regularly found enforceable because they provide an important tool
 22 for companies like Meta to police their platforms in furtherance of important public interests.

23 **Second**, Meta is entitled to judgment on its claims under the CFAA, CDAFA, and the
 24 UCL's unlawful prong. The undisputed evidence establishes that BrandTotal violated the CFAA
 25 and CDAFA because it continued to access and obtain data from Meta's computers—including
 26 from password-protected parts of Facebook and Instagram—after Meta revoked BrandTotal's
 27 permission to do so as of October 1, 2020 when Meta took technical and legal enforcement
 28 measures. And BrandTotal's violation of the CFAA and CDAFA also warrants judgment on the

1 UCL's unlawful prong, which makes violations of state and federal law independently actionable.

2 **Third**, Meta is entitled to summary judgment on BrandTotal's interference counterclaims.

3 The BrandTotal contracts that Meta purportedly disrupted are unlawful because they have the
 4 object of illegally scraping data from Meta, and any supposed interference with them was justified
 5 to address BrandTotal's widespread unlawful conduct in any event. Nor can BrandTotal establish
 6 the element of causation because its alleged harms resulted from the independent acts of itself and
 7 third parties, not Meta. For the same reasons, Meta is entitled to judgment on BrandTotal's UCL
 8 claim, which depends entirely upon BrandTotal's meritless interference claims.

9 STATEMENT OF FACTS

10 A. Facebook and Instagram Terms

11 1. Meta's Terms Prohibit Unauthorized Automated Collection

12 The Facebook and Instagram Terms each limit **how** data can be collected, prohibiting users
 13 from "access[ing] or collect[ing] data from [Meta's] Products using automated means (without
 14 [its] permission)," and it is uncontested that that prohibition has been in place since before
 15 BrandTotal began scraping data in 2017 and are still in place today. Exs. 2-6, Ex. 7 at 35:3-19.
 16 And they limit **what** data can be collected, prohibiting users from "attempt[ing] to access data you
 17 do not have permission to access." Ex. 3; Ex. 5.

18 2. Meta's Interest In Protecting Data On Its Platform

19 These terms protect Meta's products, services, and users and are consistent with industry
 20 standards. *See infra* pp. 5-6, 14-16. Unauthorized collection of user data through automated means
 21 (or "scraping"), degrades public trust in Meta's platforms; undermines the integrity and operation
 22 of Meta's networks; takes away users' control of their data; and harms users' privacy interests and
 23 free expression. Ex. 8 ¶ 5. Scraping also harms advertisers on Meta's platforms who maintain as
 24 confidential, information about their advertising campaigns and strategies. Ex. 9 at 27:9-13. In
 25 many circumstances, Meta does not publicly disclose information about an advertiser's campaign
 26 (for example, targeting criteria or budget). Ex. 9 at 74:15-20, Ex. 10 at 56:4-14. Meta makes
 27 available advertising analytics information to advertisers through authorized means that protect
 28 both user privacy and advertisers' proprietary interests. Ex. 10 at 35:4-14.

1 3. BrandTotal Agreed To Meta's Terms When It Created Accounts

2 BrandTotal admits that a user agrees to the Facebook and Instagram Terms when signing
 3 up for an account, Ex. 35 at 3, and that BrandTotal created a Facebook account in June 2017 and
 4 an Instagram account in December 2016, Dkt. 23 ¶¶ 37-42; Ex. 7 at 20:8-21:9. It is also undisputed
 5 that prior to the filing of this lawsuit in October 2020, BrandTotal itself [REDACTED]

6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED] until at least January 2021 or later.
 9 Ex. 13 at 143:14-18, 216:6-218:1; Ex. 14 at 53:9-21, 94:7-102:9, 103:4-104:7, 182-183; Ex. 15.

10 B. **BrandTotal Scraped Data Using “Automated Means”**

11 None of BrandTotal’s pre-litigation scraping conduct is disputed. BrandTotal concedes that
 12 it began scraping data from Facebook and Instagram beginning in 2017 (and continues to do so
 13 today). BrandTotal’s scraping conduct was extensive and distributed through different types of
 14 online infrastructure and methods, in part to [REDACTED]

15 [REDACTED]. In short, BrandTotal used a comprehensive and
 16 adversarial technical strategy to scrape different types of data from Meta. To Meta’s knowledge,
 17 this included [REDACTED]

18 [REDACTED] over the span of at least a year or more, *see infra*
 19 pp. 5, 8-10. Defendants also supplemented their [REDACTED] through the development
 20 and use of mobile applications and browser extensions that their users installed, which allowed
 21 Defendants to scrape data that was not otherwise accessible to BrandTotal (because it was content
 22 accessible only to authenticated Facebook or Instagram users), including after Meta took technical
 23 and legal enforcement measures, *see infra* pp. 4-5, 8-10.

24 1. BrandTotal Used Applications And Extensions To Scrape Data

25 Between 2017 and October 2020, BrandTotal developed, promoted, and distributed at least
 26 eleven browser extensions and mobile applications that scraped data from Facebook and
 27 Instagram. Ex. 16; Ex. 1 ¶ 51. It is undisputed that those applications and extensions engaged in
 28 the automated collection of data from Facebook and Instagram without Meta’s permission. Ex. 11

at 4; Ex. 21 at 1; Ex. 20 ¶ 77; *see also* Dkt. 63 at 29 (“BrandTotal used ‘automated means’ to access and collect data from Facebook’s website without obtaining Facebook’s permission”). They did so in two primary ways. ***First***, BrandTotal’s applications and extensions monitored logged-in users on Facebook and Instagram and surreptitiously scraped data while the user browsed those platforms. Ex. 22 at 108:11-14; Ex. 1 ¶¶ 34-35. ***Second***, BrandTotal sent unauthorized automated requests for the demographic data of the Meta user—including age, relationship status, location, and advertising interests—using the user’s log-in credentials. Ex. 22 at 113:12-114:19, Ex. 1 ¶¶ 99-102, 541; Ex. 23 ¶ 39. As discussed *infra* pp. 8-10, BrandTotal continues to use many of its applications and extensions to scrape data using both methods today. Ex. 24; Ex. 1 ¶¶ 20, 51; Ex. 13 at 167:20-168:16.

2. BrandTotal Made Unauthorized Automated Requests For Data From Its Computers To Meta Computers

BrandTotal also scraped data by

BrandTotal admitted that it [REDACTED]
[REDACTED]
[REDACTED] . Ex. 13 at 216:4-218:1, Ex. 14 at 94:7-102:9.
[REDACTED]
[REDACTED] . Ex. 13 at 218:2-4; Ex. 1 ¶ 248.
[REDACTED]
[REDACTED]
[REDACTED] Ex. 20 ¶ 99; Ex. 13 at 213:17-214:4;
Ex. 1 ¶ 246; Ex. 14 at 148:12-149:2, 150:9-12; Ex. 25 at 36:15-37:1.

C. BrandTotal's Scraping Tools Pose Security Risks to Meta and Its Users

Meta has a dedicated team and has implemented a number of technical measures (including

1 authentication requirements, IP blockers, and rate limits), consistent with industry standards, to
2 combat data scraping. Ex. 8 ¶ 5. BrandTotal does not contest that Meta’s terms against scraping
3 are important to protect user data or that Meta has an interest in doing so—in fact, its own
4 “advertising” expert concedes that [REDACTED]

5 [REDACTED]. Ex. 26 at 160:10-14. BrandTotal’s applications
6 and browser extensions pose the precise security risks that Meta’s terms are designed to avoid.

7 For example, BrandTotal [REDACTED]

8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED].

13 Ex. 13 at 189:21-196:3; Ex. 1 at ¶ 389-394. Meta protects its platforms and user data by using
14 authentication barriers (a username and password), [REDACTED]

15 [REDACTED]
16 [REDACTED]
17 [REDACTED] Ex. 13 at 145:20-146:2. [REDACTED]
18 [REDACTED] Its privacy
19 policy represented that data collected was “automatically rendered anonymized and non-personal,”

20 Ex. 24, [REDACTED] Ex. 13 at 167:20-168:16. [REDACTED]

21 [REDACTED] Ex. 30. [REDACTED]

22 [REDACTED]

23 [REDACTED] Ex. 27 ¶¶ 22-23; Ex. 13 at 147:1-148:15; Ex. 1 ¶¶ 268-270.

24 To take another example, BrandTotal’s browser extensions presented serious security risks
25 to Meta’s users because they allowed BrandTotal to scrape data from Meta users who share a
26 common browser (such as family members who use the same browser on the same computer) even
27 if only one of those users actually installed the browser extension (the “Shared Computer
28 Problem”). Ex. 22 at 110:2-8; Ex. 1 ¶¶ 46-47, 250-254; Ex. 20 ¶¶ 116-118; Ex. 23. BrandTotal’s

1 30(b)(6) designee acknowledged its extensions created this security vulnerability and admitted that
 2 BrandTotal attempted to “fix” the problem, only *after* Meta’s lawsuit, by requiring a user to opt-
 3 in with each new log-in to Facebook or Instagram. Ex. 22 at 110:2-111:22; Ex. 31.

4 **D. BrandTotal Proceeded Contrary To Legal Advice**

5 BrandTotal received express legal advice that its scraping practices are prohibited under
 6 the Facebook and Instagram Terms, or at best operate in “a grey area.” In April 2019, BrandTotal
 7 received a legal opinion [REDACTED]—i.e.,
 8 “from a direct link by BT [BrandTotal] to a Facebook API” “and not via End User”—“is
 9 prohibited” under the Facebook Terms. Ex. 32 at 1858. With respect to collection via BrandTotal’s
 10 applications and extensions, the opinion stated that collection where BrandTotal actively “uses the
 11 extension to connect with Facebook via API and/or ‘calls’ to gather data” operates in at best “a
 12 grey area.” Ex. 32 at 1857. BrandTotal nonetheless scraped data from Facebook and Instagram at
 13 a massive scale, and it concedes that it [REDACTED]

14 [REDACTED]. Ex. 7 at 90:11-20.

15 **E. BrandTotal’s Violations Continue After Meta Discovers BrandTotal’s Data
 16 Scraping Operation And Sues To Enforce Its Terms**

17 **1. Meta’s Investigation And Technical Enforcement Actions**

18 After detecting a fraction of BrandTotal’s sprawling scraping operation, Meta launched an
 19 investigation to determine the scope and nature of the violations and determined that BrandTotal
 20 violated its terms. Ex. 27 ¶16. Its investigators concluded that BrandTotal’s applications and
 21 extensions evaded Meta’s anti-scraping protections by piggybacking on actual user activity. Ex.
 22 33 at 54:25-55:11. The investigators concluded that BrandTotal was exfiltrating user profile data
 23 (e.g., gender, UserID, Ad Interests) and misrepresenting its identity (as an authenticated user)
 24 while contacting the Meta’s computers. Ex. 27 ¶¶ 13, 17; Ex. 33 at 39:3-12.

25 Meta took various technical enforcement measures against BrandTotal including disabling
 26 BrandTotal’s known Facebook and Instagram accounts, Karve Decl. ¶ 5, and reporting two of
 27 BrandTotal’s extensions to Google, Ex. 34. [REDACTED]
 28 [REDACTED]

1 [REDACTED] . See Ex. 13 at 216:4-9; Karve Decl. ¶¶ 11-15. After receiving Meta’s
 2 report, Google conducted its own independent investigations into the reported extensions in line
 3 with its standard practice. Ackerman Decl. ¶¶ 5, 6, 12. Google determined that BrandTotal’s
 4 extensions did not properly disclose their collection of user data and removed them from the
 5 Chrome store. *Id.* ¶ 13.

6 **2. Meta’s Lawsuit**

7 Meta filed suit in the Superior Court of California on October 1, 2020, alleging that
 8 BrandTotal’s scraping extensions violated its terms and putting BrandTotal on notice that Meta
 9 had revoked BrandTotal’s access to its platforms. Dkt. 148 ¶ 71; Ex. 36 at 13; Dkt. 183 (conceding
 10 that Meta “Facebook … revoked access”). On October 14, 2020, Meta refiled its complaint in this
 11 Court, adding claims under the CFAA, CDAFA, UCL, and for tortious interference with contract.
 12 Dkt. 1. Less than a month later, this Court denied BrandTotal’s motion for a temporary restraining
 13 order, declining to approve BrandTotal’s ongoing scraping and recognizing that “BrandTotal built
 14 its business on ignoring Facebook’s prohibition on automated access without permission.” Dkt. 63
 15 at 34. Throughout the litigation, Meta has reiterated to BrandTotal that it does not have permission
 16 to collect data from Facebook or Instagram, including *inter alia* through a March 4, 2021 letter
 17 from counsel emphasizing that “BrandTotal’s access to Facebook” (including via UpVoice 2021)
 18 “remains revoked.” Ex. 78; *see also* Dkt. 156 at 16; Ex. 37.

19 **3. BrandTotal’s Continued Violations of Meta’s Terms Despite Technical and**
 20 **Legal Enforcement Actions**

21 Nonetheless, BrandTotal continues its unauthorized scraping operation to this day. It is
 22 undisputed that BrandTotal used its [REDACTED]

23 [REDACTED]
 24 [REDACTED] . Ex. 14 at 182:2-183:13; Ex. 25 at 143:14-18.² And
 25 BrandTotal continues to this day [REDACTED]

26 [REDACTED]
 27 [REDACTED]
 28 ² [REDACTED] . Ex. 25 at 49:14-16, 113:5-18; Ex. 14 at 184:8-12.

1 [REDACTED] Ex. 20 ¶ 67. [REDACTED]

2 [REDACTED] Ex. 14 at 148:12-150:12.

3 BrandTotal also continues to scrape data using its applications and extensions. After its
 4 extensions were removed by Google, BrandTotal continued to scrape data through approximately
 5 10 to 15% of previously installed UpVoice extensions that remained operational and continued
 6 collecting password-protected data through approximately mid-February 2021. Ex. 22 at 91:19-
 7 94:5, Ex. 47 at 23:23-24:12. [REDACTED]

8 [REDACTED] . Ex. 13 at 281:16-20, 282:2-8; Ex. 79
 9 at 5495. [REDACTED]

10 [REDACTED]

11 [REDACTED] . Ex.
 12 25 at 40:18-45:21. [REDACTED]

13 [REDACTED] . Ex. 14 at 166:11-21.

14 In February 2021, months after Meta revoked its access, BrandTotal launched another
 15 scraping tool called UpVoice 2021. BrandTotal admits that UpVoice 2021 relies on logged in users
 16 in order to scrape data from password-protected areas of Facebook and does so “automatically.”
 17 Ex. 21 at 2-3; Ex. 20 ¶ 77. Unbeknownst to Meta (and undisclosed to the Court),³ BrandTotal
 18 [REDACTED]

19 [REDACTED] Ex. 20 ¶ 102; Ex. 25 at 143:14-18. In the words of
 20 one of its developers, [REDACTED]

21 [REDACTED] Ex. 17 at 5487. [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED] Ex. 14 at 178:9-16, 183:13-185:11; Ex. 16; Ex. 20 ¶ 102.

26 _____
 27 ³ During discovery, BrandTotal disclosed the existence of eleven applications and extensions. *See*
 28 Ex. 16. Although BrandTotal repeatedly represented throughout discovery that it had disclosed
 every application and extension that scraped data from Facebook and Instagram, *see e.g.*, Ex. 13
 at 279:15-280:8, Meta learned after the discovery period had closed that BrandTotal had concealed
 the existence of [REDACTED] Exs.16-18.

1 In addition, BrandTotal maintains [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED] Ex. 81; Ex. 1 ¶¶ 647-648, [REDACTED]
 5 [REDACTED] Ex. 25 at 64:2-11, 81:16-82:3.

6 ARGUMENT

7 I. META IS ENTITLED TO SUMMARY JUDGMENT ON ITS BREACH OF CONTRACT CLAIM

8 BrandTotal does not dispute *any* element of Meta's breach of contract claim. It concedes
 9 that it agreed to Facebook and Instagram Terms prohibiting the automated collection of data and
 10 that it collects data from Meta's products using automated means to this day. *See* Ex. 12; Ex. 28
 11 at 6; Ex. 36 at 9-12; Ex. 20 ¶¶ 53-57. In response to Meta's interrogatory asking for "the full basis
 12 for [BrandTotal's] contention" that it "did not breach any contracts with [Meta]," BrandTotal only
 13 identified two defenses: that (1) Meta's decision to disable some of its accounts relieved
 14 BrandTotal of its contractual obligations and (2) the provisions that BrandTotal continues to breach
 15 are void as a matter of public policy. Ex. 36 at 9-12. Both fail as a matter of law.

16 A. There Is No Dispute That BrandTotal Has Breached Its Contracts with Meta

17 To prevail on a claim for breach of contract, a plaintiff must establish: "(1) the existence
 18 of a contract, (2) plaintiff's performance or excuse for non-performance, (3) defendant's breach,
 19 and (4) resulting damages to plaintiff." *O'Brien as Tr. of Raymond F. O'Brien Revocable Tr. v.*
 20 *XPO CNW, Inc.*, 362 F. Supp. 3d 778, 784 (N.D. Cal. 2018). No element is in dispute.

21 1. Meta And BrandTotal Have Valid Contracts And Meta Performed

22 BrandTotal admits it agreed to Meta's terms when, beginning in December 2016, it created
 23 numerous Facebook and Instagram accounts for its business—[REDACTED]
 24 [REDACTED] Ex. 7 at 20:8-17; Ex. 12; Ex. 13 at 216:4-9;
 25 Ex. 14 at 143:22-145:16; Karve Decl. ¶ 11-18; Dkt. 23 ¶¶ 68 (admitting creation of accounts), 36-
 26 40; *see also* Dkt. 154 (reaffirming Answer). BrandTotal also admits that Meta performed under
 27 the contract at least until September 30, 2020. Ex. 35 at 1-2.

1 2. BrandTotal Breached The Contract When It Scrapped Data Using Automated
 2 Means Without Meta's Permission

3 BrandTotal breached, and continues to breach, Meta's prohibition on automated collection
 4 of data from Meta products without permission. Ex. 5 ("You may not access or collect data from
 5 our Products using automated means (without our prior permission)."); Ex. 3 ("You can't attempt
 6 to ... collect[] information in an automated way without our express permission."); Ex. 11 at 3-4;
 7 Ex. 20 ¶ 77. BrandTotal deployed at least thirteen browser extensions and mobile applications
 8 programmed to scrape data using automated means from Facebook and Instagram. BrandTotal's
 9 own technical expert concedes that BrandTotal "automatically collects this information." Ex. 20 ¶
 10 77. [REDACTED]
 11 [REDACTED] . *Id.* ¶ 100 (conceding collection through "backend" code);
 12 Ex. 1 ¶¶ 36-39. BrandTotal concedes that it [REDACTED]
 13 [REDACTED] " before the filing of this lawsuit. Ex. 7 at 90:8-20. This Court
 14 has already found that Defendants "used 'automated means' to access and collect data from
 15 Facebook's website without obtaining Facebook's permission as required by the terms of service."
 16 Dkt. 63 at 29; Dkt. 108 at 7. All of BrandTotal's existing and past scraping tools—including
 17 UpVoice (2019), UpVoice 2021, Social One, Phoenix, Anonymous Story Viewer, Story Savebox,
 18 [REDACTED]—breach the
 19 prohibition against automated collection.

20 BrandTotal also breached other contract terms. It is undisputed BrandTotal breached
 21 Meta's prohibition on accounts created with false information. *See* Ex. 5 § 3.1; Ex. 3. BrandTotal's
 22 30(b)(6) designee testified BrandTotal [REDACTED]
 23 [REDACTED] Ex. 13 at 217:20-218:1; *see also id.* at 216:6-9. BrandTotal also undisputedly
 24 violated Meta's prohibition on creating accounts after having an account disabled for violation of
 25 the platform terms, Ex. 5 § 3.1; Ex. 3; Ex. 20 ¶ 104. There is also no dispute that BrandTotal
 26 accessed data it did not have permission to access. Ex. 5 § 3.2.3; Ex. 3; Ex. 7 at 90:9-20.

27 3. Meta Suffered Damages Because Of BrandTotal's Breaches

28 Nor can there be any material factual dispute that Meta suffered damages as a result of

1 BrandTotal's breaches. **First**, it is undisputed that Meta expended resources investigating and
 2 remediating BrandTotal's breaches. Ex. 80 at 1-5; Ex. 82; Prowse Decl. Ex. A ¶¶ 21-38; Herter
 3 Decl. at ¶ 4; Karve Decl. ¶ 4; Ex. 29; *see E. & J. Gallo Winery v. Instituut Voor Landbouw-En*
 4 *Visserijonderzoek*, 2018 WL 2463869, at *9 (E.D. Cal. June 1, 2018) ("security and investigation
 5 costs" constitute breach of contract damages). **Second**, BrandTotal has been unjustly enriched as
 6 a result of its automated collection. Prowse Decl. Ex. A at ¶¶ 39-59; *Foster Poultry Farms, Inc. v.*
 7 *SunTrust Bank*, 377 Fed. App'x 665, 669 (9th Cir. 2010) ("[U]nder California law, a defendant's
 8 unjust enrichment can satisfy the 'damages' element of a breach of contract claim, such that
 9 disgorgement is a proper remedy."). While BrandTotal disputes **how much** money it earned by
 10 selling Facebook and Instagram data, there is no dispute that it monetized that data. Ex. 19 at
 11 167:11-23. That is sufficient to award summary judgment as to BrandTotal's **liability** independent
 12 of the amount of damages to be proven at trial. *See Castillo v. Nationstar Mortg. LLC*, 2016 WL
 13 6873526, at *4 (N.D. Cal. Nov. 22, 2016) (granting summary judgment on breach of contract claim
 14 where the "undisputed evidence" was "sufficient to demonstrate the fact of damages").

15 **B. BrandTotal's Affirmative Defenses Fail As A Matter of Law**

16 1. BrandTotal's Contract-Termination Defense Must Be Rejected

17 Unable to dispute that it breached its contractual obligations, BrandTotal seeks to escape
 18 liability by arguing that its contract with Meta was terminated by Meta's enforcement actions and
 19 thus there can be no liability. Not so.

20 **First**, Brand Total's contract-termination defense fails as to its pre-litigation conduct
 21 because BrandTotal concedes it was bound by the Facebook and Instagram Terms before its
 22 accounts were disabled. Ex. 36 at 10. That alone establishes liability.

23 **Second**, as to its post-litigation conduct directed at Facebook, BrandTotal's obligations
 24 survive the termination of any account under the plain language of the Facebook Terms. Section
 25 4.2 of Facebook Terms provides that "[i]f you delete or we disable your account, these Terms shall
 26 terminate as an agreement between you and us, but the following provisions will remain in place:
 27 3, 4.2-4.5." Ex. 5. This survival clause makes Facebook's anti-scraping provision (§ 3.2.3)
 28 enforceable following termination of the contract. *See, e.g., Western Filter Corp. v. Argan, Inc.*,

1 540 F.3d 947, 952 (9th Cir. 2008) (a valid survival clause extends contractual obligations under
 2 California law); *In re Aureal, Inc.*, 2006 WL 2130903, at *4 (N.D. Cal. July 25, 2006) (similar).

3 **Third**, BrandTotal’s contract-termination defense would also fail in all events because it is
 4 undisputed that BrandTotal [REDACTED]. BrandTotal admits
 5 it “[REDACTED],” Ex. 13 at 216:6-9,
 6 [REDACTED]. Ex. 14 at
 7 102:13-21; 143:22-144:1; 145:10-16; *see also* Karve Decl. ¶¶ 11-15. BrandTotal’s technical expert
 8 concedes that [REDACTED] Ex. 20
 9 ¶ 104; Ex. 7 at 20:6-20:22.⁴ BrandTotal admits that it necessarily agreed to the Facebook and
 10 Instagram Terms each time it created accounts, including the still-active accounts created in 2018
 11 or before. Ex. 7 at 20:6-20:22; Ex. 12; Karve Decl. ¶¶ 11-15; *see also* *In re Facebook Biometric*
 12 *Info. Privacy Litig.*, 185 F. Supp. 3d 1155, 1164-67 (N.D. Cal. 2016) (finding Facebook’s user-
 13 registration process constitutes a binding contract on the user). Thus, BrandTotal’s contractual
 14 relationship with Meta is ongoing.

15 **2. Meta’s Contract Terms Are Enforceable**

16 BrandTotal also contends that Meta’s terms are void for public policy. Ex. 36 at 9-12. That
 17 is an exceptional defense that BrandTotal comes nowhere near establishing. A court will not void
 18 a contract “unless it is entirely plain that a contract is violative of sound public policy” because
 19 public policy **also** favors the enforcement of contracts entered into by private parties. *City of Santa*
 20 *Barbara v. Superior Ct.*, 41 Cal. 4th 747, 777 n.53 (2007); *S & J Rentals, Inc. v. Hilti, Inc.*, 294 F.
 21 Supp. 3d 978, 990 (Mar. 23, 2018) (noting importance of “freedom of contract,” especially among
 22 “sophisticated entit[ies]”). BrandTotal is a sophisticated entity that sought and obtained legal
 23 advice that the scraping at issue in this case clearly or at least potentially violates Meta’s terms and
 24 proceeded anyway. *See supra* p. 7. “[C]ourts are … reluctant to declare a contract void as against
 25 public policy,” *Batts v. Bankers Life & Casualty Co.*, 2015 WL 166869, at *4 (N.D. Cal. Jan. 13,
 26 2015), and “[t]he authorities all agree that a contract is not void as against public policy unless it

27
 28 ⁴ BrandTotal also continues to pay individuals in India to use its Restricted Panel extension while
 logged-in to a Facebook account, further binding BrandTotal to Facebook’s terms. Ex. 14 at 185:4-15.

1 is injurious to the interests of the public as a whole or contravenes some established interest of
 2 society,” *Epic Games, Inc. v. Apple Inc*, 2021 WL 4128925, at *121 (N.D. Cal. Sept. 10, 2021)
 3 (citation omitted). “[W]hether a contract is against public policy ‘is a question of law’” amenable
 4 to summary judgment. *Planned Parenthood Fed’n of Am., Inc. v. Ctr. for Med. Progress*, 402 F.
 5 Supp. 3d 615, 670-674 (N.D. Cal. 2019).

6 BrandTotal boldly claims that “the public policy favoring competition and the free flow of
 7 information in the public domain” allows this Court to invalidate Meta’s prohibition against
 8 automated collection (and by implication the terms of other countless other websites, including
 9 BrandTotal’s). Ex. 36 at 10. But this Court should not “declare contractual provisions void or
 10 unenforceable on public policy grounds without firm legislative guidance,” *Santisas v. Goodin*, 17
 11 Cal. 4th 599, 621 (1998), of which BrandTotal offers none. BrandTotal points only to an entirely
 12 inapposite U.S. Supreme Court case balancing the “competing demands of patent and contract
 13 law,” *Lear, Inc. v. Adkins*, 395 U.S. 653, 674-675 (1969), and suggests that “expert testimony, and
 14 materials relating to the history of advertising transparency” might substantiate its claim, Ex. 36
 15 at 10-11. But expert testimony about the history of advertising transparency says nothing about
 16 the public interest in prohibiting unauthorized scraping, and BrandTotal’s own expert undermines
 17 its argument in any event.⁵ In the absence of any clear legislative guidance, this Court should not
 18 hold that anti-scraping provisions like Meta’s void for public policy. *See Sanchez v. County of San*
 19 *Bernardino*, 98 Cal. Rptr. 3d 96, 104 (2009) (reversing summary judgment that contract provision
 20 was void “in the absence of a statute” in support of position).

21 Moreover, Meta’s prohibition on unauthorized automated data collection is commonplace.
 22 Websites ranging from YouTube and Amazon to the United States Congress and the New York
 23 Times prohibit automated collection of data from their websites.⁶ Even ***BrandTotal’s own terms***

24
 25⁵ BrandTotal’s own expert [REDACTED]
 26 [REDACTED] Ex. 26 at 160:6-14.

27
 28⁶ See YouTube, *Terms Of Service*, <https://www.youtube.com/t/terms> (last accessed Mar. 11, 2022);
 Amazon, *Conditions Of Use*, <https://www.amazon.com/gp/help/customer/display.html?nodeId=508088> (last accessed Mar. 11, 2022); and LinkedIn, *LinkedIn Service Terms*,
<https://www.linkedin.com/legal/l/service-terms> (last accessed Mar. 11, 2022); *see also* Ex. 84 at 10 n.48 (collecting entities, including Twitter, United States Congress, and the New York Times,

1 include such a restriction. *See* Ex. 83. Courts, including in this District, routinely enforce these
 2 terms. *See, e.g., Niantic, Inc. v. Global++,* 2019 WL 8333451, at *7 (N.D. Cal. Sept. 26, 2019)
 3 (granting preliminary injunction based on scraping in violation of terms of service); *Craigslist,*
 4 *Inc. v. Naturemarket, Inc.*, 694 F. Supp. 2d 1039, 1069 (N.D. Cal. 2010) (granting permanent
 5 injunction). And in enforcing Facebook’s Terms, in particular, courts in this District have found
 6 that the “public has an interest in ensuring that computers are not accessed without authorization.”
 7 *Facebook, Inc. v. Power Ventures, Inc.*, 252 F. Supp. 3d 765, 785 (N.D. Cal. 2017); *Facebook,*
 8 *Inc. v. Sluchevsky*, 2020 WL 5823277, at *7 (N.D. Cal. Aug. 28, 2020) (public interest supports
 9 permanent injunction against unauthorized data scraping). Indeed, “Facebook’s ability to
 10 decisively police the integrity of its platforms ***is without question a pressing public interest.***”
 11 *Sluchevsky*, 2020 WL 5823277, at *9 (quoting *Stackla, Inc. v. Facebook Inc.*, 2019 WL 4738288,
 12 at *6 (N.D. Cal. Sept. 27, 2019)) (emphasis added); *accord* Dkt. 63 at 30 (finding “a significant
 13 public policy supports allowing Facebook to police automated access to password-protected
 14 platforms”).

15 The egregious nature of BrandTotal’s conduct only underscores the importance of these
 16 contractual provisions. It is undisputed that two of BrandTotal’s applications [REDACTED]

17 [REDACTED]
 18 [REDACTED] Ex. 1 ¶¶ 43-44; Ex. 13 at
 19 189:21-196:3. It is undisputed that BrandTotal [REDACTED]

20 [REDACTED] Ex. 24, Ex. 13 at 167:11-8. It is undisputed
 21 that BrandTotal designed its browser extensions to collect data regardless of whether the person
 22 using the browser actually installed the extension. Ex. 22 at 110:2-111:22. And it is undisputed
 23 that BrandTotal stopped those practices only ***after*** Meta filed this lawsuit. *Id.* Even with respect to
 24 the data BrandTotal contends it obtained with user consent through a Meta user’s decision to self-
 25 compromise their accounts by downloading an extension or application, this Court has recognized
 26 that Meta has an interest in “policing access” to its network. Dkt. 63 at 23.

27 Far from undermining public policy, Facebook and Instagram’s terms have been good
 28 _____
 that prohibit automated collection).

1 public policy—allowing Meta to protect its users and its platform against the security risks raised
 2 by data scraping, including through judicial enforcement. Dkt. 63 at 30. BrandTotal’s attempt to
 3 void these terms would have staggering consequences, not only by allowing BrandTotal to
 4 continue its own violative conduct but by eliminating a critical tool that Meta and countless other
 5 websites use to police their products to protect users and the integrity of their sites.

6 **II. META IS ENTITLED TO SUMMARY JUDGMENT ON ITS CFAA CLAIM**

7 The CFAA prohibits intentionally accessing and obtaining information from a protected
 8 computer without authorization. *See* 18 U.S.C. § 1030(a)(2)(C). Because the undisputed evidence
 9 shows that BrandTotal accessed and scraped data from Meta’s computers after Meta expressly
 10 revoked authorization, Meta is entitled to judgment on its CFAA claim. *See Facebook, Inc. v.*
 11 *Power Ventures, Inc.*, 844 F.3d 1058, 1067-69 (9th Cir. 2016).

12 **A. BrandTotal Accessed And Obtained Information From Meta’s Protected
 13 Computers After Meta Revoked Authorization For Its Access**

14 Meta revoked any authorization BrandTotal might have had to access Meta’s computers
 15 when Meta disabled BrandTotal’s known Facebook and Instagram accounts on September 30,
 16 2020, Ex. 27 ¶¶ 27-33; Karve Decl. ¶¶ 11-15, and then filed suit on October 1, 2020, Ex. 36 at 13;
 17 Dkt. 40-2. Because the undisputed facts show that BrandTotal nonetheless continued intentionally
 18 accessing and obtaining information from Meta’s computers, Meta is entitled to judgment.

19 **1. BrandTotal Intentionally Accessed And Obtained Information From Meta’s
 20 Computers**

21 “Access” as used in the CFAA means “to gain entrance to or use a system,” or “to enter,
 22 approach, pass to and from, or communicate with.” *United States v. Nosal*, 930 F. Supp. 2d 1051,
 23 1063 (N.D. Cal. 2013) (emphasis and citation omitted). It encompasses, therefore, “not only the
 24 moment of entry, but also the ongoing use of a computer system,” for example, using a computer
 25 after another has logged onto it. *Id.* And “obtaining information” is broadly construed to include
 26 not only taking but also “merely reading.” *Id.* at 1062 (quoting Sen Rep. No. 104-357, at 7 (1996)).

27 Here, the undisputed facts show that BrandTotal intentionally accessed and obtained
 28 information from Meta’s computers. BrandTotal admits that at least its mobile applications and

1 so-called “legacy” extensions (UpVoice 2019 and the related extensions) accessed Meta’s
 2 computers and scraped information by “ma[king] background requests … to the Facebook [or
 3 Instagram] server[s]” to “request … information.” Ex. 16 at 2-4; *see also* Ex. 20 ¶ 39; Ex. 1 §§ 7.3,
 4 9.3, 10.3. “Background requests” are “calls made” directly by BrandTotal’s applications and
 5 extensions “to the Facebook [or Instagram] server[s],” independent of any action on behalf of the
 6 application or extension’s user. *See* Ex. 22 at 113:9-114:17; *see also* Ex. 1 at § 4.7.1 (defining this
 7 as “Active Collection”). In addition, [REDACTED]

8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED] Ex. 20 ¶ 90, and “pars[ing] different elements” from “Facebook’s
 11 social feed,” Ex. 47 at 44:14-45:11; *see also* Ex. 85 at 111:6-114:11; Ex. 25 at 86:21-88:2, 131:8-
 12 140:15([REDACTED]); Ex. 17. Finally, BrandTotal uses its server-side
 13 collection technique to “call the URL” for “advertisement[s]” on “Facebook’s website.” Ex. 16 at
 14 3; *see also* Ex. 14 at 36:10-38:11 [REDACTED]

15 [REDACTED]).⁷

16 2. BrandTotal Accessed Meta Computers Without Authorization

17 It is also undisputed that BrandTotal continued to access Meta’s protected computers after
 18 Meta revoked (through technical and legal means) its access to Facebook and Instagram on
 19 October 1, 2020. BrandTotal concedes that two “Legacy” applications (Phoenix and Social One)
 20 were never removed by Google and continue “collecting information from the Facebook platform”
 21 to this day. *See* Ex. 22 at 76:13-80:13. It is, moreover, undisputed that even among those apps and
 22 extensions that Google stopped distributing in October 2020, BrandTotal continued scraping data
 23 for months afterward through 10-15% of its installed applications and extensions, which were not
 24 removed from users’ devices and continued “send[ing] request[s] to the Facebook servers for
 25 information and send[ing] that information to BrandTotal.” *Id.* at 91:19-95:4. For example,
 26 [REDACTED]

27
 28 ⁷ There is no dispute that Meta’s computers are “protected” within the meaning of the statute,
 which encompasses any computer or network connected to the Internet. *See Multiven, Inc. v. Cisco
 Sys., Inc.*, 725 F. Supp. 2d 887, 891 (N.D. Cal. 2010).

1 [REDACTED] . Ex.
 2 47 at 23:25-24:4. And BrandTotal continues [REDACTED]
 3 [REDACTED] . Ex. 25 at 40:18-22; Ex. 86 at 6.
 4 BrandTotal even developed [REDACTED]
 5 [REDACTED]
 6 [REDACTED] . See Ex. 25 at 25:16-26:9, 87:8-88:2;
 7 Ex. 87. And [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED] Ex. 20 ¶ 102; Ex. 25 at 135:8-140:4, 143:14-18; Ex. 14 at 178:9-179:14.
 11 Whether BrandTotal’s “panelists” agreed to BrandTotal’s scraping by downloading its
 12 applications and extensions is legally irrelevant. After Meta revoked access, “[p]ermission from
 13 the users alone was not sufficient to constitute authorization.” *Power Ventures*, 844 F.3d at 1068.
 14 BrandTotal also [REDACTED]
 15 [REDACTED] . See Ex. 20 ¶ 100; Ex. 88; Ex. 1 §§ 6.1-6.5.
 16 This flagrant collection after Meta indisputably revoked BrandTotal’s authorization to access its
 17 computers requires judgment on Meta’s CFAA claim.

18 **B. BrandTotal Caused A Loss Of \$5,000 Or More**

19 Civil remedies are available under the CFAA whenever the defendant’s unauthorized
 20 access caused a loss of \$5,000 or more in any one-year period. *See Brekka*, 581 F.3d at 1131-32.
 21 A “loss” includes “any reasonable cost to any victim, including the cost of responding to an
 22 offense,” 18 U.S.C. § 1030(e)(11), such as costs incurred “analyzing” and “investigating” a
 23 defendant’s actions. *See Power Ventures*, 844 F.3d at 1066. The undisputed evidence shows that
 24 in the one-year period after October 1, 2020, Meta incurred \$95,784 in losses identifying,
 25 analyzing, and responding to BrandTotal’s conduct. *See* Prowse Decl. Ex. A ¶ 38 & Exs. 3-4; Ex.
 26 33 at 61:20-62:24, 74:25-134:24.

27 **C. BrandTotal’s Defenses Are Meritless**

28 BrandTotal has offered a laundry list of excuses in an attempt to avoid liability under the

1 CFAA. *See* Ex. 36 at 12-14. Each one fails under the undisputed facts and applicable law.

2 1. Meta's Claim Is Timely

3 BrandTotal does not dispute that, at least prior to this litigation, its "legacy" applications
4 and extensions accessed and obtained information from Meta's computers. Instead, it contends
5 that [REDACTED]

6 [REDACTED]
7 [REDACTED]. Ex. 36 at 13-14. That argument fails on all fronts. To start, as
8 discussed above, it is undisputed that [REDACTED]

9 [REDACTED]
10 [REDACTED]. *See supra* pp. 17-18. That post-revocation scraping alone is
11 alone sufficient to enter judgment for Meta on its CFAA claim.

12 As for Phoenix and Social One, Meta's CFAA claim is timely because it was filed "within
13 2 years of the date of the act complained of." 18 U.S.C. § 1030(g). The "act complained of" is
14 BrandTotal's access to Meta's computers without authorization, and each separate act of access
15 "trigger[s] [its] own separate statute of limitations." *Calhoun v. Google LLC*, 526 F. Supp. 3d 605,
16 625 (N.D. Cal. 2021). Thus, because BrandTotal does not dispute that [REDACTED]

17 [REDACTED], Meta's CFAA claim—filed on
18 October 14, 2020—would be timely even if it depended on only those two applications.

19 2. BrandTotal Cannot Avoid CFAA Liability On The Ground That Its
20 Applications and Extensions Circumvent No Technical Barriers

21 BrandTotal also contends that [REDACTED]
22 [REDACTED] " but is silent on its other extensions and applications.
23 Ex. 36 at 14. That cannot defeat judgment on Meta's CFAA claim for two reasons.

24 **First**, Social One and Phoenix (and BrandTotal's other technologies) **have** circumvented
25 technical barriers. Authentication requirements, for example, are a "specific type of authorization
26 ... which turn[] on whether a user's credentials allow him to proceed past a computer's access
27 gate." *Van Buren*, 141 S. Ct. at 1659 n.9. [REDACTED]
28 [REDACTED]

1 [REDACTED]
 2 [REDACTED]. *See* Ex. 1 at §§ 4.1, 4.13,
 3 10.4; Ex. 13 at 98:2-117:2 ([REDACTED]
 4 [REDACTED]). Moreover, to prevent Meta’s systems from detecting BrandTotal’s access, [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]. *See* Ex. 13 at 234:9-235:9; Ex. 1 §§ 4.14.2, 10.7.2 **Second**, in any case, a requirement
 8 to circumvent “technological access barrier[s]” is “missing from the statutory language” and not
 9 required, at least where, as here, there has been an express revocation of authorization. *United*
 10 *States v. Nosal*, 844 F.3d 1024, 1038-39 (9th Cir. 2016).

11 3. BrandTotal Violates The CFAA By Using UpVoice 2021

12 BrandTotal contends [REDACTED]

13 [REDACTED] Ex. 36
 14 at 13. That argument fails both on the undisputed facts and the law. On the facts, BrandTotal
 15 concedes that UpVoice 2021 [REDACTED]
 16 [REDACTED] Ex. 20 ¶ 90; *see also* Ex. 47 at 44:14-45:11. In other words,
 17 BrandTotal uses UpVoice 2021 to “access” and “communicate with” Meta’s computers by passing
 18 information from Meta’s computers to BrandTotal. *Nosal*, 930 F. Supp. 2d at 1063. And on the
 19 law, it is well established that “[o]nce permission has been revoked, technological gamesmanship
 20 or the enlisting of a third party to aid in access will not excuse liability.” *Power Ventures*, 844 F.3d
 21 at 1067; *accord Nosal*, 844 F.3d at 1028. Just as BrandTotal may not itself directly send data
 22 requests to Meta’s computers, nor may it [REDACTED]
 23 [REDACTED] as a means to access that to which its permission has been revoked.

24 4. BrandTotal’s Server-Side Collection Also Violates The CFAA

25 Finally, as to its server-side collection technique, BrandTotal argues that [REDACTED]
 26 [REDACTED].” Ex. 36 at 13. As a threshold matter, that is
 27 not true. BrandTotal admitted that [REDACTED]
 28 [REDACTED]. *See* Ex. 13 at 215:8-

1 228:13 [REDACTED]

2 [REDACTED]); Ex. 14 at 181:18-183:13, 189:5-

3 194:6 ([REDACTED]).

4 BrandTotal's server-side collection violated the CFAA, even under BrandTotal's view of the law.

5 In any event, it is legally irrelevant whether BrandTotal has [REDACTED]

6 [REDACTED] While the Ninth Circuit

7 previously suggested in *hiQ Labs, Inc. v. LinkedIn Corp.* that publicly facing webpages were

8 beyond the CFAA's reach, 938 F.3d 985, 999-1004 (9th Cir. 2019), that opinion has since been

9 vacated, *see* 141 S. Ct. 2752 (Mem.), and its reasoning is inconsistent with the Supreme Court's10 explication of the CFAA in *Van Buren*. Specifically, *hiQ*'s distinction between public and non-11 public webpages is irreconcilable with *Van Buren*'s clear statement that the CFAA applies "to *all*

12 information from all computers that connect to the Internet," 141 S. Ct. at 1652 (emphasis added).

13 Congress could have limited the CFAA's protections to only nonpublic computers, but did not—

14 despite its awareness of the significance of such a distinction in certain circumstances, *see* 18

15 U.S.C. § 1030(a)(3) (prohibiting unauthorized access to "any nonpublic" government computer).

16 Accordingly, BrandTotal violated the CFAA by continuing to access and obtain information from

17 any portion of Facebook and Instagram after Meta expressly revoked its authorization to do so.

18 *See Craigslist Inc. v. 3Taps Inc.*, 964 F. Supp. 2d 1178, 1181-84 (N.D. Cal. 2013) (cease-and-19 desist letter revoked access to otherwise publicly accessible website); *see also EF Cultural Travel*20 *BV v. Zefer Corp.*, 318 F.3d 58, 63-64 (1st Cir. 2003).

21 Independently, though not necessary to establish a violation where there has been an

22 express revocation of authorization, BrandTotal's server-side collection technique also

23 circumvents technical barriers to accessing Meta's computers. The undisputed evidence confirms

24 that, to prevent Meta's systems from detecting and stopping BrandTotal's access, BrandTotal

25 designed its sever-side collection technique to [REDACTED]

26 [REDACTED]

27 [REDACTED]

28 [REDACTED]. *See* Ex. 13 at 234:9-235:9; Ex. 1 §§ 4.14.2, 6.6.2, 7.7.1, 10.7.2. BrandTotal also

1 uses [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]); Ex. 14 at 148:23-156:6; Ex. 1 §§ 4.14.3, 6.6.2. And
 5 BrandTotal used [REDACTED]
 6 [REDACTED], including after Meta revoked BrandTotal's
 7 authorization to access Meta computers in October 2020. *See* Ex. 14 at 52:25-66:6, 79:9-85:13,
 8 189:5-194:6. The deliberate circumvention of these barriers to access confirms that BrandTotal's
 9 access was "without authorization." *Facebook, Inc. v. Grunin*, 77 F. Supp. 3d 965, 973 (N.D. Cal.
 10 2015); *accord Power Ventures*, 844 F.3d at 1068 (circumventing IP block demonstrates lack of
 11 authorization); *3Taps*, 964 F. Supp. 2d at 1186 n.7 (IP blocking "is a real barrier" to access).

12 **III. META IS ENTITLED TO SUMMARY JUDGMENT ON ITS CDAFA CLAIM**

13 Like the CFAA, the CDAFA prohibits "access[ing]" and "tak[ing]" or otherwise "us[ing]"
 14 "any data from a computer" "without permission." Cal. Penal Code § 502. Given the statutes' close
 15 similarity, conduct that violates the CFAA also necessarily violates the CDAFA. *See Brodsky v.*
 16 *Apple Inc.*, 445 F. Supp. 3d 110, 131 (N.D. Cal. 2020). Meta is therefore entitled to summary
 17 judgment on its CDAFA claim for the reasons stated *supra* pp. 18-22. *See United States v.*
 18 *Christensen*, 828 F.3d 763, 789 (9th Cir. 2015) (accessing with a valid password and then taking
 19 or using information improperly violates CDAFA).

20 **IV. META IS ENTITLED TO PARTIAL SUMMARY JUDGMENT ON ITS UCL CLAIM**

21 BrandTotal's CFAA and CDAFA violations also require judgment on Meta's claim under
 22 the unlawful prong of the UCL. "By proscribing 'any unlawful' business practice," the UCL
 23 "borrows violations of other laws and treats them as unlawful practices" that are "*independently*
 24 actionable" under the UCL. *Rose v. Bank of Am., N.A.*, 57 Cal. 4th 390, 396 (2013) (quotation
 25 marks and citation omitted). And Meta has suffered a financial loss sufficient to establish standing
 26 under the UCL. *See supra* p. 18; *Cappello v. Walmart Inc.*, 394 F. Supp. 3d 1015, 1019 (N.D. Cal.
 27 2019). Meta is therefore entitled to summary judgment on its claim under the unlawful prong of
 28 the UCL because the undisputed facts establish that BrandTotal violated the CFAA and CDAFA.

1 *See Beaver v. Tarsadia Hotels*, 816 F.3d 1170, 1188 (9th Cir. 2016) (affirming summary judgment
 2 on UCL unlawful claim based on violation of federal law).

3 **V. JUDGMENT ON BRANDTOTAL'S INTERFERENCE COUNTERCLAIMS IS WARRANTED**

4 After investigating BrandTotal's conduct, Meta disabled BrandTotal's Facebook and
 5 Instagram accounts, and, because that alone would do nothing to stop the operation of the
 6 extensions and thus the ongoing violation, Meta also reported the extensions to the Google Chrome
 7 Web Store. Ex. 34; Karve Decl. ¶¶ 5-8. There is no factual dispute that Google then conducted its
 8 own investigation and, based on that investigation, removed BrandTotal's extensions from the
 9 Chrome Web Store. *See* Ackerman Decl. ¶¶ 12-14; Ex. 38 at 11-13; Ex. 39.

10 BrandTotal claims that Meta's email to Google caused disruption to BrandTotal's contracts
 11 with customers, individuals who used UpVoice (whom BrandTotal refers to as "panelists"),⁸ and
 12 Google. Its interference claims fail for myriad reasons. At the threshold, Meta is entitled to
 13 judgment both because the object of BrandTotal's contracts is unlawful and therefore cannot
 14 support any interference claim and because any interference was justified in light of Meta's own
 15 contractual rights. Alternatively, at the very least, the absence of any valid contract means that
 16 BrandTotal must, but cannot, satisfy the elements of an intentional interference with prospective
 17 economic advantage ("IIPEA") claim, which requires, among other things, that Meta's actions
 18 proximately caused any harm resulting from the purported interference.

19 **A. BrandTotal's Unlawful Contracts Cannot Support An Interference Claim**

20 As this Court has recognized, "BrandTotal built its business on ignoring [Meta's]
 21 prohibition on automated access without permission." Dkt. 63 at 34. BrandTotal nonetheless
 22 brazenly claims that Meta tortiously interfered with contractual relationships that, like its entire
 23 business, are predicated on the breach of Meta's terms. In essence, BrandTotal asks the Court to
 24 grant it the fruits from its unlawful business, but "[n]o principle of law is better settled than that a
 25 party to an illegal contract cannot come into a court of law and ask to have its illegal objects carried
 26 out." *Yoo v. Jho*, 147 Cal. App. 4th 1249, 1251 (2007); *see also Shuman v. Squaretrade Inc.*, 2020

27
 28 ⁸ [REDACTED]

See Ex. 36 at 3-6.

1 WL 12894954, at *12 (N.D. Cal. Aug. 31, 2020). That foundational principle defeats each of
 2 BrandTotal's interference claims as a matter of law.

3 A "cause of action for intentional interference with contractual relations requires an
 4 underlying *enforceable* contract." *Bed, Bath & Beyond of La Jolla, Inc. v. La Jolla Village Square*
 5 *Venture Partners*, 52 Cal. App. 4th 867, 879 (1997) (emphasis added). Any contract the
 6 "performance of which involves a breach of contract of a third person is illegal" and unenforceable.
 7 Restatement of Contracts § 576 & cmt. a; *accord Williams v. Eaze Solutions, Inc.*, 417 F. Supp.
 8 3d 1233, 1239-40 (N.D. Cal. 2019). That is precisely the case here.

9 BrandTotal contends that its contractual relationships were disrupted when, following
 10 Google's removal of its applications and extensions, BrandTotal [REDACTED]

11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED] . Ex. 36 at 3-6. But
 14 the performance of any contractual obligation to obtain or "[REDACTED]" data from Facebook or
 15 Instagram by automated means requires unlawful conduct, including the breach of Meta's terms.
 16 *See supra* pp. 18. Similarly, BrandTotal has no valid, enforceable right to promote its applications
 17 and extensions on Google's platforms; those applications and extensions violate both Google's
 18 own terms, *see* Ackerman Decl ¶¶ 3, 13; Ex. 38 at 13, and Meta's terms, and thus any agreement
 19 to distribute the unlawful extensions is itself unenforceable. *See Yoo*, 147 Cal. App. 4th at 1255.

20 BrandTotal's interference claims cannot be reconfigured into IIPEA claims. As this Court
 21 has recognized, a claim based on interference with an unenforceable contract can sometimes be
 22 converted into an IIPEA claim. *See Bed, Bath & Beyond*, 52 Cal. App. 4th at 879; *see also* Dkt.
 23 158 at 23. Not here. Unlike in *Bed, Bath & Beyond*, BrandTotal's contracts are unenforceable
 24 based on illegality, not a mere technical defect. *See* 52 Cal. App. 4th at 873-74 (contract
 25 unenforceable due to party's failure to execute). Whether formalized in a binding contract or not,
 26 the relationships BrandTotal claims Meta disrupted are premised upon BrandTotal breaching its
 27 contracts with Meta. Because there is no public interest in protecting such unlawful relationships,
 28 they cannot support an IIPEA claim, which serves to "protect the public interest in stable economic

1 relationships,” *Reeves v. Hanlon*, 33 Cal. 4th 1140, 1152 (2004). Meta is entitled to judgment on
 2 BrandTotal’s tortious interference claims, however framed, on this basis alone.

3 **B. Any Alleged Interference By Meta Was Justified**

4 BrandTotal’s interference claims independently fail as a matter of law because Meta may
 5 not be held liable for simply acting to enforce its own contracts with BrandTotal. “[I]f a
 6 defendant’s ‘conduct was lawful and undertaken to enforce its rights,’ it cannot be held liable for
 7 intentional interference with a contract even if it knew that such conduct might interrupt a third
 8 party’s contract.” *SIC Metals, Inc. v. Hyundai Steel Co.*, 442 F. Supp. 3d 1251, 1256 (C.D. Cal.
 9 2020) (granting summary judgment based on justification defense); *accord Weststeyn Dairy 2 v.*
 10 *Eades Commodities Co.*, 280 F. Supp. 2d 1044, 1089 (E.D. Cal. 2003) (same). Here, Meta
 11 investigated BrandTotal’s conduct and determined that BrandTotal was violating the terms
 12 governing BrandTotal’s use of Meta’s platforms. *See* Ex. 40; *see also supra* pp. 10-12. Indeed,
 13 Meta determined that BrandTotal was “one of the most aggressive scrapers” it had encountered,
 14 “deceptively collect[ing] Facebook user metadata and ad targeting data” through multiple
 15 extensions and “across different surfaces.” *See* Ex. 41 at -169. To enforce its own contractual
 16 rights, Meta developed an “Enforcement Plan” that included “[c]ontact[ing] [the] Google CWS,”
 17 or Chrome Web Store. *See* Ex. 40 at -716; Karve Decl. ¶¶ 5-9.

18 Meta cannot be held liable for these actions unless BrandTotal can show they were a “sham
 19 ... designed for the specific purpose” of interfering with BrandTotal’s contracts. *See Webber v.*
 20 *Inland Empire Investments*, 74 Cal. App. 4th 884, 902 (1999). BrandTotal contends that Meta’s
 21 actions were wrongful because Meta [REDACTED]

22 [REDACTED] Ex. 36 at 5. That fails for two reasons. *First*, the precise
 23 wording of the email is irrelevant; the undisputed evidence shows that Meta was acting to enforce
 24 its legitimate contractual rights, *see* Ex. 40, and its actions were therefore not a “sham.” BrandTotal
 25 earlier contended that Meta acted for the improper purpose of shutting down a competitor, *see*,
 26 *e.g.*, Dkt. 138 at 12, but discovery has produced **no** evidence of any such motivation. Instead, the
 27 record shows only that Meta took legitimate steps to investigate and enforce against BrandTotal’s
 28 undisputed breach of Meta’s terms. *See* Exs. 40, 41.

1 **Second**, and in any event, no reasonable factfinder could agree that Meta’s email was
 2 fraudulent. Meta communicated to Google that it “believe[d]” several of BrandTotal’s extensions
 3 were “improperly scraping user PII (e.g., gender, relationship status, ad interests, etc.), without
 4 proper disclosure.” Ex. 34 at -961. BrandTotal has pointed to nothing suggesting Meta did not
 5 genuinely hold that belief. It is undisputed that BrandTotal’s was collecting “PII” as defined in
 6 that email to Google. *See* Ex. 20 ¶ 76. It is also undisputed that BrandTotal represented to its users
 7 that its extensions collected only “anonymous” demographic and profile information. Exs. 42, 43;
 8 *see also* Ex. 44 at 125; Ex. 24. Following its investigation, Meta understood those representations
 9 to be “misleading” because “[u]ser ID hashing is considered ‘pseudo anonymized’ since you can
 10 still correlate information from multiple entries bearing the same hashed user ID and discover the
 11 user identity.” Ex. 41 at -169; *see also* Ex. 40 at -702 (contemporaneous investigatory document
 12 stating Meta’s understanding that, although hashed, “the user id is still easily recoverable”); Karve
 13 Decl. ¶ 7. Meta also understood that BrandTotal’s method of “data extraction was not targeted,”
 14 meaning that BrandTotal collected “a lot more information” than specifically intended and
 15 disclosed, Ex. 52 at 93:22-95:16,⁹ and that UpVoice could scrape data from users of shared
 16 household computers without their knowledge or consent, *see* Karve Decl. ¶ 7; Ex. 45 at 141. In
 17 light of this undisputed evidence, Meta’s actions were justified and judgment should be entered on
 18 the interference counterclaims on this basis alone.

19 **C. BrandTotal’s Contracts With Customers**

20 1. Because BrandTotal’s Contracts Are Unenforceable, BrandTotal’s Claim Must
 21 At Least Satisfy The Elements Of Interference With Prospective Economic
Advantage—But The Undisputed Facts Do Not Support Such A Claim

22 If it can pursue its claims at all (it cannot), at the very least, BrandTotal must establish the
 23 elements of an IIPEA claim. *See Bed, Bath & Beyond*, 52 Cal. App. 4th at 879. Therefore,
 24 BrandTotal must establish: (1) an economic relationship with the probability of future economic
 25 benefit, (2) Meta’s knowledge of the relationship, (3) an intentional act designed to disrupt the
 26 relationship, (4) actual disruption to the relationship, (5) economic harm to BrandTotal

27
 28 ⁹ Contrary to BrandTotal’s contention, *see* Ex. 36 at 5, Meta did not misrepresent the affiliation of
 BrandTotal’s extensions but simply noted that they were “closely related behaviorally to five
 extensions created by **another** developer.” Ex. 34 (emphasis added).

proximately caused by Meta's acts, and (6) that Meta's purportedly interfering conduct was independently "wrongful by some legal measure. *Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal. 4th 1134, 1153-54 (2003). BrandTotal's claim fails as a matter of law.

a. The undisputed facts show Meta did not intend to induce a breach or disruption of BrandTotal's economic relationships

To satisfy the third element of its interference claim, BrandTotal must prove that Meta either acted specifically "with the purpose or desire to interfere" or acted with the knowledge that "interference [was] certain or substantially certain to occur as a result of [its] action." *Korea Supply Co.*, 29 Cal. 4th at 1155-56. But after almost 18 months of litigation, there is no direct evidence that Meta intended to interfere with any contractual relationships. To the contrary, the undisputed evidence shows that Meta reported BrandTotal's extensions to Google because of the extensions' numerous violations of Meta's terms. *See* Ex. 40. And no reasonable factfinder could conclude that Meta knew that emailing Google about two of BrandTotal's ten then-active extensions and applications would cause any disruption to any of BrandTotal's customer relationships.

First, Meta did not know whether or how Google would respond to its email. *See* Karve Decl. ¶ 8. As Mr. Karve, one of the Meta employees who emailed Google, stated days after the email, [REDACTED]

[REDACTED]. Ex. 45 at -143.

Second, Meta did not know that Google removing the extensions would cause BrandTotal to be unable to perform any contractual obligations. Meta understood generally that BrandTotal sold competitive marketing analytics, *see* Ex. 41, but there is no evidence that Meta "was sufficiently aware of the details" of BrandTotal's relationships—for example, whether BrandTotal had any obligation to provide any particular volume of data or whether BrandTotal depended upon data collected through its extensions as opposed to by other means—"to form an intent to harm" BrandTotal. *Davis v. Nadrich*, 174 Cal. App. 4th 1, 11 (2009); *accord Winchester Mystery House, LLC v. Global Asylum, Inc.*, 210 Cal. App. 4th 579, 596-97 (2012) (affirming summary judgment on this basis). And, as discussed below, the chain of events connecting the removal of BrandTotal's extensions to any harm to its customer relationships was too long and contingent upon too many

unknown circumstances to permit any inference that Meta knew with the requisite certainty that its email to Google would cause the disruption of any customer relationships.

b. No reasonable factfinder could conclude that Meta proximately caused the disruption of any customer relationship

Under California law, proximate cause is assessed based on, among other things, “the connection between defendants’ conduct, the harm intended, and the harm actually caused.” *San Francisco v. Philip Morris, Inc.*, 957 F. Supp. 1130, 1142 (N.D. Cal. 1997). “[I]nterference becomes less certain as the time frame expands, the identity of potential victims becomes more vague, [and] the causal sequence becomes more attenuated.” *Korea Supply*, 29 Cal. 4th at 1165. Summary judgment is required on an IIPEA claim where the “logical string” connecting the purportedly interfering act with any resulting harm is “too attenuated.” *KARBZ, Inc. v. MRP of Mich., Inc.*, 2013 WL 12086317, at *6 (C.D. Cal. Aug. 26, 2013); *cf. Martinez v. California*, 444 U.S. 277, 284-85 (1980) (holding five-month delay broke causation).

BrandTotal contends that

Ex. 36 at 5-6. But these purported disruptions occurred [REDACTED] after Meta's September 21, 2020 email to Google, and the chain of events connecting those events is too long and disjointed to support any finding of proximate cause. *See Korea Supply*, 29 Cal. 4th at 1166.

For any reasonable factfinder to find that Meta’s September 21, 2020 email proximately caused the disruption of BrandTotal’s customer relationships, BrandTotal would have to show that (1) Google removed UpVoice from the Chrome Store at Meta’s request, rather than for its own independent reasons; (2) BrandTotal could not obtain sufficient data after Google removed UpVoice; and (3) any contract cancelations or credits offered months later were caused primarily by the removal of the extensions and not subsequent data disruptions caused by other factors. The undisputed evidence breaks every link in this already implausible chain of causation.

First, Google did not remove UpVoice at the behest of Meta. Instead, the undisputed

1 evidence shows that Google first independently investigated the two extensions (UpVoice and
 2 Who's Following Me) and independently determined that [REDACTED]
 3 [REDACTED]
 4 [REDACTED]. Ex. 38 at 03, 11-13; Ackerman Decl. ¶¶ 12-14. Notably, Google's

5 reasons for removing UpVoice and Who's Following Me included concerns different from those
 6 Meta had flagged. While Google's review confirmed that BrandTotal did not adequately disclose
 7 its collection of user data ([REDACTED])

8 ([REDACTED]), Google also determined that BrandTotal [REDACTED]

9 [REDACTED] Ex. 38 at 10-13.

10 *Second*, BrandTotal continued to receive the data it needed from multiple sources
 11 notwithstanding Google's removal of some of its extensions. For example, Google did not remove
 12 BrandTotal's Phoenix and Social One applications, which continue to provide data to BrandTotal
 13 to this day. *See* Ex. 22 at 77:4-80:13, 97:10-11. And for many users of the removed extensions,
 14 the extensions remained installed and operational long after they were taken off the Chrome Web
 15 Store. *See id.* at 91:19-92:19, 96:9-22. Indeed, BrandTotal told its customers [REDACTED]
 16 [REDACTED]

17 [REDACTED] Ex. 46 at 104.

18 *Third*, even if a subsequent disruption to BrandTotal's ability to scrape data occurred, the
 19 undisputed facts show that factors other than Google's removal of UpVoice and Who's Following
 20 Me caused it. According to BrandTotal, disruptions to its ability to scrape data first arose after
 21 routine changes to the structure of data on Twitter and Facebook around January 2021 caused
 22 BrandTotal's still-operational applications and extensions to no longer collect data from those
 23 platforms. *See* Ex. 22 at 91:19-95:14; Ex. 47 at 23:25-24:4; Ex. 48 178:17-180:6; *see also id.* at
 24 159:15-160:16 (testifying that [REDACTED]). It was not
 25 until these independent events affected BrandTotal's access to data that any customer [REDACTED]
 26 [REDACTED]

27
 28 ¹⁰ BrandTotal's damages expert [REDACTED] " Ex. 62 at 25, but
 the undisputed evidence shows no actionable terminations. [REDACTED]

1 [REDACTED]. See Exs. 50, 51, 53, 54; *see also* Ex. 55 at 280:12-296:25. Moreover, BrandTotal
 2 expressly communicated to its customers that it was [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]. *See* Ex. 50; *see also* Ex. 47 at 41:15-42:4 ([REDACTED]
 6 [REDACTED]
 7 [REDACTED]). And BrandTotal's own head of customer success testified that disruptions
 8 to BrandTotal's customer relationships were caused [REDACTED]
 9 [REDACTED] Ex. 48 at 37:18-20, 96:18-98:10, 184:9-187:7; *see UCP Int'l Co. v. Balsam*
 10 *Brands Inc.*, 420 F. Supp. 3d 966, 980-82 (N.D. Cal. 2019) (non-frivolous litigation activity cannot
 11 support an interference claim).

12 In light of all of this, no reasonable factfinder could conclude that Meta's September 21,
 13 2020 email, as opposed to the myriad other reasons why customers might decline to renew or
 14 accept credits on contract renewals, caused BrandTotal's purported harm. Indeed, BrandTotal's
 15 own documents show that it [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]

21 Unsurprisingly, in light of all of these factors, BrandTotal [REDACTED]
 22

23 [REDACTED] *See* Ex. 46. [REDACTED]
 24 [REDACTED] long after Meta's purportedly interfering act, and then [REDACTED]
 25 [REDACTED]

26 [REDACTED] Ex. 48 at 104:3-11, 201:5-202:2; Ex. 60. Contract
 27 renewals, contracts that did not exist at the time of the purportedly interfering act, and at-will
 28 contracts cannot support an interference with contract claim. *See Ixchel Pharma, LLC v. Biogen,*
Inc., 9 Cal. 5th 1130, 1147 (2020) (contract renewal); *Reeves*, 33 Cal. 4th at 1152 (at-will contact);
Della Penna v. Toyota Motor Sales, U.S.A., Inc., 11 Cal. 4th 376, 392-93 (1995) (prospective
 contractual relationship).

1 [REDACTED]. See Ex. 7 at 152:19-153:7. And, tellingly, BrandTotal’s head of
 2 customer success could not say [REDACTED]
 3 [REDACTED]. See Ex. 55 at 281:11-18, 290:15-25, 296:5-
 4 297:7, 300:25-301:11.

5 Because no reasonable factfinder could find from this undisputed evidence that Meta’s
 6 purportedly tortious September 2020 email to Google proximately caused any disruption to
 7 BrandTotal’s customer relationships months later, Meta is entitled to judgment as a matter of law.
 8 See *Dual Diagnosis Treatment Ctr., Inc. v. Centene Corp.*, 2021 WL 4464204, at *2 (C.D. Cal.
 9 May 7, 2021) (multiple months and intervening discretionary decisions break proximate cause).

10 c. Meta’s purportedly interfering act was not independently wrongful

11 Meta is also entitled to judgment because no reasonable factfinder could conclude that
 12 Meta’s conduct was independently wrongful. See *Korea Supply*, 29 Cal. 4th at 1158-59 (an act is
 13 wrongful if “unlawful, that is, … proscribed by some constitutional, statutory, regulatory, common
 14 law, or other determinable legal standard”).

15 BrandTotal contends that Meta’s purported interference was independently wrongful
 16 because its September 2020 email to Google [REDACTED]

17 [REDACTED] Ex. 36 at 5. But as discussed above (at 25-26), no reasonable factfinder
 18 could conclude based on the undisputed evidence that Meta knew at the time of the email that any
 19 statement made regarding Meta’s understanding of the operation of BrandTotal’s extensions was
 20 false or recklessly made, and the email was therefore not independently unlawful. See *Arntz*
 21 *Contracting Co. v. St. Paul Fire & Marine Ins. Co.*, 47 Cal. App. 4th 464, 480 (1996).

22 2. Even If BrandTotal’s Customer Contracts Were Not Unenforceable,
 23 BrandTotal’s Interference Claim Would Fail As A Matter Of Law

24 BrandTotal’s claim still fails as a matter of law even if viewed as an interference with
 25 contract claim. To prove an interference with contract claim, BrandTotal must establish: (1) the
 26 existence of a valid contract, (2) that Meta knew of that contract, (3) that Meta’s intentional acts
 27 were designed to induce a breach or disruption of the contractual relationship, (4) an actual breach
 28 or disruption of the contractual relationship, and (5) that the breach or disruption resulted from

1 Meta's interfering act. *Reeves v. Hanlon*, 33 Cal. 4th at 1148.

2 The undisputed evidence shows that BrandTotal cannot satisfy at least two of these
 3 elements. The third element overlaps with an IIPEA claim, and Meta is entitled to judgment on the
 4 basis of that element for the reasons already stated. *See supra* pp. 27-28 And on the fourth element,
 5 BrandTotal cannot establish the breach or disruption of any ongoing contractual relationship with
 6 respect to all but two of the customer relationships purported interfered with. BrandTotal identifies
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]

11 [REDACTED] *See* Ex. 36 at 4; Ex. 62 at 25-39.¹¹ The undisputed facts show that for all but two of those
 12 customers [REDACTED]

13 [REDACTED] and cannot therefore support an interference with contract claim. *See Ixchel*
 14 *Pharma, LLC v. Biogen, Inc.*, 9 Cal. 5th 1130, 1147 (2020).

15 BrandTotal contends that its contracts with [REDACTED]
 16 [REDACTED]
 17 [REDACTED]. *See* Ex. 36 at 6; Ex. 62 at 31, 39;

18 *see also* Ex. 68.¹² But [REDACTED]
 19 [REDACTED] [REDACTED]
 20 [REDACTED]. Exs. 69, 70, 71; *see also* Ex. 55 at

21 _____
 22 ¹¹ BrandTotal's interrogatory responses identify two customers, [REDACTED]
 23 [REDACTED], not included in its damages report. *See* Ex. 36 at 4. Because BrandTotal claims no
 24 harm in connection with these relationships, Meta understands BrandTotal to no longer pursue any
 25 interference claim as to them. Regardless, BrandTotal could not state an interference with contract
 claim as to either because [REDACTED], *see* Ex. 63,
 and the only possible harm associated with BrandTotal's contract with [REDACTED]
 [REDACTED]. *See* Ex. 68.

26 ¹² Mr. Hoffman's report categorizes all loss associated with [REDACTED] as loss due to contract
 27 termination, *see* Ex. 62 at 29, but the undisputed evidence shows that
 [REDACTED]

28 *See* Ex. 60; *see also* Ex 48 at 103:5-15.

¹³ BrandTotal's contracts with

[REDACTED] *See* Ex. 65 ([REDACTED]); Exs. 66 & 67 ([REDACTED]); Exs. 58 & 59 ([REDACTED]).

1 274:23-276, 281:4-6 ([REDACTED]). The same is
 2 true of [REDACTED], *see* Exs. 53, 68, 72, [REDACTED], *see* Exs. 49, 68, 73, L’Oreal, *see* Exs. 67, 68,
 3 [REDACTED], *see* Ex. 60, and [REDACTED], *see* Exs. 68, 74. And [REDACTED]
 4 [REDACTED] Ex. 19 at 56:17-20; Ex. 46.¹⁴ These contracts therefore cannot
 5 support an interference with contact claim. *See Ixchel Pharma, LLC*, 9 Cal. 5th at 1147.¹⁵

6 As for [REDACTED], the undisputed evidence shows that [REDACTED]
 7 [REDACTED]
 8 [REDACTED] *See* Ex. 55 at 324:21-331:13; Ex. 76. [REDACTED]
 9 [REDACTED] *See* Ex. 55 at 331:7-13.

10 **D. Contracts With UpVoice Panelists**

11 1. BrandTotal’s Claim Must Satisfy The Elements Of IIPEA, But The Undisputed
 12 Facts Support Do Not Support Such A Claim

13 As with BrandTotal’s customer contracts, its panelist contracts cannot support any
 14 interference claim because they have as their object the breach of BrandTotal’s (and panelists’) contracts with Meta. *See Bed, Bath & Beyond*, 52 Cal. App. 4th at 879. At the very least, BrandTotal’s claim as to panelists must satisfy the elements of an IIPEA claim both because its contracts are unlawful, *id.*, and also terminable at will, *see* Ex. 77 at -402; *see also Ixchel Parm.*, 9 Cal. 5th at 1147; *Lovesy v. Armed Forces Ben. Ass’n*, 2008 WL 696991, at *11 (N.D. Cal. Mar. 13, 2008) (“As a matter of law, a claim for interference with contract is improper if the contract is ‘at-will.’”). The undisputed facts support no such claim.

21
 22
 23 ¹⁴ Additionally, [REDACTED] *See* Ex. 55 at 307:2-25; Ex. 75 at 15; *see also UCP Int’l Co.*, 420 F. Supp. 3d at 980-82 (non-frivolous litigation activity cannot support an interference claim).

24
 25 ¹⁵ BrandTotal claims harm associated with two additional [REDACTED] contracts (for the [REDACTED]) that were entered *after* Meta’s purportedly interfering act. *See* Ex. 62 at 25; Ex. 56 ([REDACTED]); Ex. 57 ([REDACTED]). The same is true of BrandTotal’s contract with [REDACTED]. *See* Ex. 64 ([REDACTED]).

26
 27
 28 Because these contracts were at most prospective business relationships at the time of Meta’s purportedly interfering act, they cannot support an interference with contract claim. *See Della Penna v. Toyota Motor Sales, U.S.A., Inc.*, 11 Cal. 4th 376, 392-93 (1995).

a. No reasonable factfinder could conclude that Meta proximately caused the disruption of any panelist relationships or any harm therefrom

BrandTotal contends that Meta caused the disruption of its relationships with panelists because, after Google removed UpVoice from the Chrome Web Store, [REDACTED]

[REDACTED] . Ex. 36 at 5. To prevail on its claim, BrandTotal must prove that it suffered “economic harm … proximately caused by” Meta’s purported interference. *Korea Supply*, 29 Cal. 4th at 1153. But no reasonable factfinder could find any such harm. BrandTotal contends that it was harmed because it had to [REDACTED]

36 at 5. BrandTotal, however, has identified no evidence substantiating any such economic harm; rather, the only harm BrandTotal has even attempted to substantiate concerns its relationships with *customers*, not panelists. *See generally* Ex. 62.

Second, even if economic harm purportedly suffered in connection with customer relationships could somehow also support BrandTotal’s interference claim as to panelists, no reasonable factfinder would find the requisite proximate causation. *See supra* pp. 28-31.

b. Meta's purportedly interfering act was not independently wrongful

For the reasons stated above, Meta is also entitled to judgment because no reasonable factfinder could conclude that Meta’s conduct was independently wrongful. *See supra* pp. 31.

2. Even if BrandTotal's Panelist Contracts Were Enforceable And Its Claims Were Viewed As Interference With Contract Claims, Meta Is Entitled To Judgment As A Matter Of Law

Meta is entitled to judgment even viewing this as an interference with contract claim because no reasonable factfinder could conclude that Meta intended to induce the breach or disruption of BrandTotal’s contracts with panelists. BrandTotal does not contend that Meta had any specific intent to induce a breach of its contracts with panelists. *See* Ex. 36 at 3-6. Further, the record shows that Meta knew that it was ***not*** certain that Google would respond to its email by removing BrandTotal’s extensions. *See* Ex. 45 at -143; Karve Decl. ¶ 8. And though the evidence generally shows that Meta was aware that BrandTotal agreed to pay panelists for using UpVoice,

1 *see* Ex. 40 at -694-95, there is no evidence from which a factfinder could infer that Meta knew that
 2 the removal of UpVoice would cause panelists [REDACTED]
 3 (through, for example, the UpVoice website instead of the extension itself).

4 **E. BrandTotal's Contracts With Google**

5 **1. Because Its Contract with Google Is Unenforceable, BrandTotal's Claim Must**
 6 **At Least Satisfy The Elements Of Interference With Prospective Economic**
Advantage, But The Undisputed Evidence Supports No Such Claim

7 Once again, at the very least, BrandTotal's claim must satisfy the elements of an IIPEA
 8 claim. In addition to the relevant rights being unenforceable, BrandTotal's contracts with Google
 9 are also terminable at will. *See Ackerman Decl.* ¶¶ 20-21; *see also Bed, Bath & Beyond*, 52 Cal.
 10 App. 4th at 879; *Reeves*, Cal. 4th at 1152. The undisputed record, however, supports no IIPEA
 11 claim. As already discussed, no reasonable factfinder could conclude that Meta's conduct was
 12 independently wrongful, and therefore Meta is entitled to judgement as a matter of law on
 13 BrandTotal's interference claim. *See supra*, p. 31.

14 **2. Even if BrandTotal's Google Contract Were Enforceable And Its Claim Were**
 15 **Viewed As An Interference With Contract Claim, The Undisputed Evidence**
Supports No Such Claim

16 Even viewed as an interference with contract claim, Meta is entitled to summary judgment.
 17 As discussed above, the undisputed facts show that Meta did not know whether or how Google
 18 would respond to its request to look into BrandTotal's extensions. *See* Ex. 45 at -143. Accordingly,
 19 there is no triable dispute of fact and Meta is entitled to judgment as a matter of law. *See Oakley,*
 20 *Inc. v. Nike, Inc.*, 988 F. Supp. 2d 1130, 1138 (C.D. Cal. 2013) (granting summary judgment where
 21 evidence showed defendant did not know interference was substantially certain).

22 **VI. JUDGEMENT IS WARRANTED ON BRANDTOTAL'S UCL CLAIM**

23 BrandTotal contends Meta violated the unlawful prong of the UCL by interfering with its
 24 business relationships. *See* Dkt. 183 ¶¶ 140-146. This claim falls with the interference claim.

25 **CONCLUSION**

26 For these reasons, the Court should grant Meta's motion for partial summary judgment.

1 Dated: March 11, 2022

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 11, 2012 electronically filed the above document with the Clerk of the Court using CM/ECF which will send electronic notification of such filing to all registered counsel.

Dated: March 11, 2022

By: Sonal N. Mehta

Sonal N. Mehta